

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Insurance Agent
License of Chad M. Lange; License No.
20057202

SCHEDULING ORDER

On October 3, 2002, the Respondent filed a Motion regarding a scheduling order. The Department filed a reply to the Motion on October 17, 2002. The issue of scheduling in this proceeding was discussed at the prehearing conference on September 19, 2002.

Mary L. Knoblauch, Esq. of the firm of Anthony, Ostlund & Baer, P.A., 3600 Wells Fargo Center, 90 S. 7th Street, Minneapolis, MN 55402, appeared representing the Respondent, Chad Lange. David M. Aafedt, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, represented the Department of Commerce.

Based upon the argument at the prehearing conference and the written submissions in this matter,

IT IS HEREBY ORDERED: that the scheduling of this contested case proceeding shall be as follows:

1. The contested case hearing in this matter will begin three weeks after the conclusion of the hearing set for, In the Matter of the Certificate of Authority of United American Insurance Company, OAH Docket No. 1-1004-14966-2.

2. A final prehearing conference in this matter will be held one week before the beginning of the evidentiary hearing.

3. The deadline for Petitions for Intervention in this proceeding is December 15, 2002.

4. The parties may conduct depositions and serve written discovery in accordance with the provisions of Minn. R. pts. 1400.6700 to 1400.6900. With respect to the taking of depositions, each party shall be permitted, without leave of the Administrative Law Judge, to take depositions as if this case were governed by the Minnesota Rules of Civil Procedure. Any disputes as to the reasonableness of the notice, location, length, scope of conduct of a deposition shall be resolved by the Administrative Law Judge upon request of a party.

5. All discovery must be completed by July 10, 2003.

6. All non-dispositive motions must be filed by July 15, 2003.
7. Dispositive motions must be filed by August 31, 2003.
8. Each party shall serve its final witness list, along with all written exhibits the party expects to offer in evidence at the hearing, on all other parties no later than two weeks before the hearing.
9. The Office of Administrative Hearings must be advised one week prior to the hearing if a court reporter and/or transcript is requested.

Dated this 24th day of October 2002.

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

The Department of Commerce seeks to begin the hearing in this contested case proceeding on March 31, 2003. The issues in this case involve the Respondent's sale of Medicare supplement policies for the United American Insurance Company ("UAIC"). The Department has also initiated a separate proceeding action against UAIC based upon its sale of Medicare supplement policies in Minnesota. That hearing begins on September 29, 2003. The Department agreed to that hearing date.

The Respondent was an insurance agent for UAIC from mid-2000 through mid-2001. He sold Medicare supplement insurance policies for UAIC in Minnesota. He argues that the Department's case against him is essentially an attack on the sales practices of UAIC and that the same issues will be addressed in his case as in the case against UAIC. He points out that of the nine counts asserted in the Statement of Charges against him the first eight involve allegations about how he sold Medicare supplement policies for UAIC. The Department contends that the sales practices in the sale of Medicare supplement policies were permitted under the direction of UAIC, its supervising agency and managers.

The Respondent argues that it would be unfair to require him to defend against the Department's allegations that the sales practices violate Minnesota law, when these same questions will be relitigated in the UAIC case. The Respondent suggests that the legal challenges to the Department's statutory interpretations should be resolved first in the contested case proceeding between the Department and UAIC, not in the case between the Department and one single agent. Mr. Lange points out that he does not have access to all of the information upon which UAIC relied to develop its practices and procedures. If the Department does not prevail on its claims against UAIC, most of

its claims against Mr. Lange will likely fail as well. The Respondent seeks an order that sets the hearing in his case to begin four weeks after issuance of the recommended decision of the Administrative Law Judge in the UAIC proceeding.

The Department argues that there is no authority to delay the hearing in this matter simply because there are common questions of law and fact between this case and another licensee facing disciplinary action. It suggests that each licensee deals with his distinct obligations and duties as a licensed insurance agent in Minnesota. The Department notes that the Respondent has previously been licensed under a restricted license and alleges that he violated the terms of that restricted license. It also asserts that the public protection purposes of the insurance regulatory scheme will be frustrated if this matter is allowed to drag out for an additional number of months.

It is generally the case that the administrative proceedings should be conducted promptly and efficiently. The rule setting out good cause for a continuance reflects this philosophy.^[1] As one commentator has noted, there are many other good reasons, apart from those noted in the rule, for granting a continuance. The ALJ must give due regard to the ability of a party to proceed effectively without a continuance and considerations of fairness may weigh heavily in favor of a continuance.^[2] Continuances should be granted when clearly required to meet the ends of justice and to prevent prejudice. In this case the Respondent has established good cause on the grounds of prejudice and judicial economy. It is unfair to require the Respondent to defend the sales practices UAIC instructed him to employ as against the Minnesota insurance laws where the insurance company itself will defend these practices six months later. UAIC is no doubt in possession of information about its activities in Minnesota that the Respondent does not presently have access to. The company also appears ready to present a full defense of its sales practices.

Under the Department's proposal it would be required to prove the illegality of the sales practices in question in three different hearings. This raises not only questions of efficiency, but also questions of the application of collateral estoppel or *res judicata*. It seems clear that the question of whether the sales practices violate Minnesota law will be more completely litigated in the UAIC hearing. Additionally, it would be certainly arguable that the insurance company has an interest in the individual agent proceedings relative to its sales practices and in fact there is a petition to intervene pending filed by UAIC in the Hogen and Flahaven insurance agent proceedings. This raises the possibility that UAIC's defense might be repeated in each agent case.

For these reasons it is appropriate to begin Respondent's hearing after that of UAIC, but without waiting for an ALJ recommended decision or a decision by the Commissioner of Commerce. This will potentially permit the Respondent to utilize evidence submitted in the insurance company case. It will also avoid duplication and permit judicial economy in the resolution of these matters.

It should be noted that although the Department initially contemplated beginning the UAIC proceeding in the spring of 2003, it agreed to delay the hearing until September of 2003, in order to allow time for mediation, discovery and motions. Should

that case be settled through medication that outcome might well have an impact in the individual agent license proceedings.

G.A.B.

^[1] Minn. R. 1400.7500.

^[2] Keppel, *Administrative Practice and Procedure*, § 9.10, (West Group 1998).